Biſhop COZENS's ARGUMENT,

PROVING, THAT

Adultery works a Diſſolution of the Marriage.

Being the Subſtance of ſeveral of Biſhop Cozens his Speeches in the Houſe of Lords, upon the Debate of the Lord Ross's Caſe.

Taken from Original Papers writ in the Biſhop's own Hand.

THE Queſtion is indefinitely to be ſpoken of, *Whether a Man being divorced from his Wife, who hath committed Adultery, and is convicted of it, may Marry himſelf to another Wife or no, during the Life of her which is divorced.*

The Place in St. *Matthew the* 5*th*, repeated again St. *Matthew the* 19*th*, has great Perſpicuity: If it be not lawful for any man to put away his Wife, and Marry again, except it be in the Caſe of Fornication, (for the diſplacing the Words, by putting the Exception before the Marriage, cannot alter the Senſe); then *à contrario*, it muſt of neceſſity follow, That if the Wife be put away for Fornication, the Husband by the Tenor of Chriſt's Words is left free to Marry again; which Freedom is not allow'd the Adultereſs her ſelf, nor to any man elſe that ſhall Marry her.

St. *Mark* and St. *Luke* have been oppoſed to St. *Matthew*; and it has been ſaid, that *Chriſt*'s words in St. *Matthew* did not properly belong to *Chriſt*'s *Diſciples*, or the *Chriſtian Church*, as the words in St. *Mark* and St. *Luke*, which are abſolute, do; which is a Saying that neither I, nor, I think, no body elſe ever heard of before: For *Chriſt*'s Sermon in the Mount was ſpoken to *his Diſciples*, and eſpecially belonged to *Chriſtians*.

'Tis clear they are ſpoken to *his Diſciples*; for he ſays to them, that they are *the Salt of the Earth, and the Light of the World*; and that they are *bleſſed, when* they *ſuffer perſecution for his Name's ſake*; which no man will ſay or apply to the *Jews*.

'Tis true, that in the 19th *Chapter* of St. *Matthew*, *Chriſt* anſwers the *Scribes* and *Phariſees*, who came to tempt him with their Queſtion, *Whether it was lawful for a man to put away his Wife for any cauſe*, as they ſaid *Moſes had permitted them to do*. But the Anſwer that *Chriſt* gave them, That it was not lawful, *but only in the caſe of Adultery, for men to put away their Wives, and to marry another*, was a Rule which concerned *all Chriſtians* to obſerve for ever after; and for that reaſon was recorded by St. *Matthew*.

The words in St. *Mark* and St *Luke*, are not to be taken abſolutely, but to be ſupplied and underſtood by his words in St *Matthew*; as in many other Caſes is clear; *viz.* the Thief upon the Croſs, Baptiſm in the Name of the Father, Son and Holy Ghoſt, *&c.* whereof many Inſtances may be brought, as the deſtruction of *Niniveh*, &c.

But for *Chriſt*'s words, the Exception confirms the Rule, and infers a Conceſſion, that in the Caſe of *Fornication*, the putting away one Wife, and Marrying another, is allowed. It is alike with divers other his Exceptions, which are found in Scripture: For brevity, I will inſtance in this one (*viz.*) *Except ye repent, ye ſhall all likewiſe periſh:* Upon which Text, if I or any Biſhop elſe were to Preach, I believe we ſhould not diſcharge our Duty, unleſs we ſhould tell the People, That if by the Grace of *God* they did repent, they ſhould not periſh.

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But as to the Exception here, the Words are not capable of any other Senſe than as I have obſerved; for except that Reſtraint be referred to Marrying again, the Senſe would run thus, *Whoſoever puts away his Wife commits Adultery*; which ſtands not with Truth or Reaſon; ſince it is not the Diſmiſſion that is Adulterous, but the Marriage of another. It is, therefore, the plain drift of our Saviour to teach the *Phariſee*, that the Marriage of a Second Wife after a Diſmiſſion of a Former, *upon any other cauſe, except for fornication*, is no leſs than Adultery; thereby inferring, That upon a Juſt Diſmiſſion for Fornication, a ſecond Marriage cannot be branded with Adultery.

Beſides, the *Phariſee*'s Queſtion [*Is it lawful for a man to put away his wife for every cauſe*] was not without a plain implication of Liberty to marry another; which *our Saviour* well knowing, gives a full Anſwer, as well to what he meant, as what he ſaid; which had not been perfectly ſatisfactory, if he had only determined that one part concerning Diſmiſſion, and not the other concerning Marriage; which Clauſe, if Two *Evangeliſts* expreſs not, yet it muſt be fetch'd neceſſarily from the Third; ſince it is a ſure and irrefragable Rule, *That all Four Evangeliſts make up one perfect Goſpel.*

The *Rhemiſts* and College of *Doway* urge for the *Popiſh* Doctrine, *Rom.* 7. 2. *The woman which hath an husband, is bound by the law to her husband as long as he liveth.* But

1. This place is to be Expounded by *Chriſt*'s Words.

2. St. *Paul* hath no occaſion here to ſpeak of *Divorce*, but of *Marriage whole and ſound*, as it ſtands by *God*'s Ordinance.

3. He ſpeaks of a Woman who is under an Husband; ſo is not ſhe that is divorced from him.

4. St. *Paul* uſeth this to his purpoſe of the Law being dead, to which we are not bound.

Nor is their Doctrine more favoured by 1 *Cor.* 7. 10. *Let not the woman depart*; as being in her Choice whether ſhe would depart or not: But in the Caſe of *Fornication*, ſhe was to depart, or rather be *put away*, whether ſhe would or not.

The Bond of the Marriage is to be enquired into, what it properly is. Being a Conjugal Promiſe Solemnly made between a man and his Wife, That each of them will live together according to *God*'s Holy Ordinance, notwithſtanding Poverty or Infirmity, or ſuch other things as may happen during their Lives. Separation from Bed and Board, which is part of their Promiſe ſo to live together, doth plainly break that part of the Bond whereby they are tied to live together both as to Bed and Board: The diſtinction betwixt Bed and Board and the Bond, is new, never mentioned in the Scripture, and unknown in the Ancient Church; deviſed only by the *Canoniſts* and the *Schoolmen* in the *Latin Church* (for the *Greek Church* knows it not) to ſerve the *Pope*'s turn the better, till he got it eſtabliſhed in the *Council of Trent*; at which time, and never before, he laid his *Anathema* upon all them that were of another Mind; forbidding all men to marry, and *not to make any uſe of Chriſt's Conceſſion.*

Bed and Board, or Cohabitation, belong to the Eſſence and Subſtance of Matrimony; which made *Eraſmus* and Biſhop *Hall* ſay, *That the diſtinction of thoſe two from the Bond, is merely Chimerical, and Fancy.*

The promiſe of Conſtancy and mutual Forbearance, if it hinders Divorce as to the *Bond*, hinders it alſo as to Bed and Board; becauſe the ſame Bed, and the ſame Table were promiſed in the Marriage Contract; but the Promiſe does not extend even to Tolerating *Adultery*, or *Malicious Deſertion*; which, according to *God's Ordinance, Diſſolves the Marriage.*

Our Saviour ſpeaks of Divorces Inſtituted by the *Moſaical Law*; but they were no other than Divorces from the *Bond.*

The Form of the *Bill of Divorce*, among the *Jews* was this, *Be Expelled from me, and free for any Body elſe.* To give the Bill of Divorce, is from the *Hebrew* Root ברח, which is to break, or cut off the Marriage. With this agree the Ancient *Canons*, *Councils*, and *Fathers* of the Church.

Concil. Neocæſar. & Elib. forbid the retaining an Adulterous Wife. *Concil. Elber. Aurelian. & Arelatens.* give Liberty in ſuch Caſe to marry again. *Clemens*'s Conſtitution, *Tertullian*, St. *Baſil* in his Canons, approved by a General Council, are for Marrying again. *Concil. Venet.* If they marry in any other Caſe than Fornication, they are to be *Excommunicated*, and not otherwiſe. *Concil Wormat.* gives Liberty to the Innocent Party to Marry after Divorce. *Concil Lateran.* gives leave for the Innocent Party after a Year to marry again.

Concil. Lateran. If any one take another Wife while a Suit is depending, and afterwards there be a Divorce between him and the Firſt, he may remain with the Second.

Lactantius, St. *Hierom* and *Epiphanius*, are for allowance of Marriage after Divorce. *Chryſoſtom, Hom.* 19. 1 *Cor.* 7. ſays, That *the Marriage is diſſolved by adultery*; *and that the husband, after he hath put her away, is no longer her husband.*

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Theophylact on the 16*th.* of St. *Luke*, says, That St. *Luke* must be interpreted by St. *Matthew*. St. *Hillary* is for marrying again, as Dr. *Fulk* saith upon St. *Matthew* the Vth. The *Eastern* Bishops, in the *Council of Florence*, are for marrying again. *Justin Matyr* speaks of a Christian Woman's giving a bill of Divorce to a Dissolute Husband, without finding any fault with it.

St. *Ambrose* says, a man may marry again, if he put away an adulterous Wife; *Theodoret* said of a Wife who violated the Laws of Marriage: *Therefore our Lord requires the Bond or Tye of Marriage to be dissolved.*

All the *Greek Church* to this day allow it. *Erasmus*, *Cajetan*, and other Papists: The Civil Law, and the Laws of the Emperor, are clear for it: And the Constitutions of our own Church of *England*, in the time of *H.* 8. *E.* 6. and Queen *Eliz.*

The Practice of the *English* Church: In the Stat. 1 *Jac. c.* 11. against Second Marriages, Divorces are excepted; and in *Canon* 107. 'tis provided they shall not marry again; but it is not said such Marriages are void, only the Caution is forfeited: *Neither doth the Canon speak of such Separations, wherein the Bond it self is broken, as 'tis by Fornication.*

Even the *Canon-Law* allows marrying again, in case a Woman seek her Husband's Life; and in case of a Bond-woman. *Gratian* says, in the Case of Adultery Lawful Marriages ought not to be denied. In the Case of an Incurable Leprosy, it was the Advice of St. *Gregory* to *Austin* the Monk, That he that could not contain, should rather marry. *Bellermin* owns that the Bond of the Marriage of Infidels is dissolvable; but the Marriage of the Faithful, and of Infidels, is of the same nature: And *Justinian*, a Jesuit, confesses, that it is simply lawfull for the Innocent Party to marry again. And the *Roman* Doctors allow a dissolution of the Bond of Marriage, if the Parties should, after consummation, transfer themselves into a Friery or Nunnery.

The *Canons* which in the case of Adultery prohibit Marrying in the Life time of the guilty Person, are contrary to Two Acts of Parliament made 25 *H.* 8. and 3 & 4 *E.* 6. wherein no *Canons* are allowed that be any way *repugnant to the Laws of God, or the Scripture, the King's Prerogative Royal, and the Statutes of this Land.* 32 Persons were to review the *Canon-Law*, in which Review, drawn up by *Archbishop Cranmer*, the Innocent Person is permitted to marry again, *according to Christ's Law and Concession.* Ref. Leg Eccles. Tit. de Adulteriis & Divortiis.

We have examples of such Marriages in *H.* 4. of *France*, *H.* 8. of *England*, Lord *Mountjoy*, Lord *Rich*, Bishop *Thornborough*, and divers others. And it is observable, That in the Case of the *Marquess of Northampton*, 5 *E.* 6. who had been divorced for his Lady's Adultery, and married another before any Act of Parliament made concerning it, an Act which passed afterwards (only two Spiritual, and two Temporal Lords dissenting) declares he had been *at liberty by the Laws of God to marry*, and did *lawfully marry* another; Where the Act manifestly supposes, that whatever had obtained for Law till that time, was void, as being *contrary to God's Law.*

The most considerable Men of the Reform'd Churches both at home and abroad, are of this Opinion: *Grotius* quotes *Tertullian*, in whose time it was lawful for the Innocent Party to Marry.

Lancelot Inst. Jur. Can, acknowledges that Divorce is a dissolution of the Marriage.

Selden, who is not likely to contradict the Laws of this Kingdom, maintaineth, That Marriage after Divorce is to be allowed: And in that particular, Dr. *Hammond* doth not contradict him, but is clearly for it.

The Opinion of *Amesius* deserves to be set down at large: "Marriage, says he, can-"not be dissolved by men at their pleasure; and for that reason, as it is considered sim-"ply and absolutely, it is rightly said to be indissolvable; because Marriage is not on-"ly a Civil, but a Divine Conjunction; and is also of that nature, that it cannot be "dissolved without detriment to either Party: Yet it is not so indissolvable, but it "may be dissolved for a Cause which God approves as just; for the Indissolvability was "not instituted for a Punishment, but for the Comfort of Innocent Persons; and it ad-"mits an Exception, wherein God ceases to conjoyn. By Adultery two are made not to "remain one Flesh: hence it is, that a Contagious Disease is not a Cause of dissolving "Marriage. *By Adultery the very Essence of the Contract is directly violated; but the "Contract ceasing, the Bond depending on the Contract necessarily ceases.* It is against all "reason, that all Matrimonial Duties should be for ever taken away, yet the Bond "or Obligation to those Duties should continue. The words of *our Lord*, *Matth.* 5. 32. "and 19. 9. have no distinction or limitation of the putting away, but simply and ab-"solutely approve of putting away; therefore they approve of a putting away, not "partial, or to a particular purpose, from Bed and Board, but *Total.*

None are against the Reformed Divines, but *Dr. Howson*, *Mr. Bunny*, and *Dr. Prideaux.*

Dr. Howson was a professed Adversary to *Dr. Raynolds*, who was a great Maintainer of the Church of *England* against all the Points of Popery, and particulary in this

Dr. Taylor, Biſhop *Hall*, *Dr. Fulk*, are for Second Marriages; no Authors againſt them but the *Council of Trent*, and thoſe of the *Church of Rome*; whoſe Credit is only ſaved by thoſe of our Church who agree with them.

Upon the difference of Explication between St. *Ambroſe*, *Origen*, and St. *Auſtin*, a new kind of Divorce has been thought of, *from Bed and Board*; but this *Divorce*, or *Name of a Divorce*, was unknown to the *Jews* and *Ancient Chriſtians*.

I ſaid ſo much before, at the Firſt and Second reading of this Bill, that I was in good hopes to have had no further occaſion given me of anſwering any Objections againſt it now; but ſeeing divers new Arguments have been ſtudied and framed againſt it ſince that time, I ſhall now endeavour to ſatisfie and clear them all.

1. The Firſt Argument againſt it, is, That the Separation from Bed and Board doth not diſſolve the Bond of Marriage. To which I muſt Reply, as I did before, That this is a diſtinction without a difference; newly invented by the *Canoniſts* and *Schoolmen*, and never heard of either in the *Old* or *New Teſtament*, nor in the times of the Antient Fathers, who accounted the Separation from Bed and Board, to be the Diſſolution of the Bond it ſelf.

2. That firſt Inſtitution of Marriage, that they may be *one Fleſh*, is by Adultery diſſolved, when the Adultreſs makes her ſelfe *one Fleſh with* another Man; and *thereby diſſolves the firſt Bond of her Marriage*.

3. The Objection, that if the Bond be diſſolved, and afterwards, if the Man or Woman be reconciled, they muſt be Married over again, is no neceſſary Conſequence, no more than 'tis in a Perſon baptized, who may break his Covenant, and renounce his Baptiſm; and yet upon true Repentance be received into God's Favour by virtue of the firſt Covenant, without any new Baptiſm. Suppoſe a Witch, who they ſay makes a Compact with the Devil, to renounce her Baptiſm; ſhould afterwards, by the Grace of God, ſeriouſly and truly Repent her ſelf of the Wickedneſs; I do not believe that any body would take upon him to Baptize her again: and if a Prieſt ſhould renounce his Orders, and turn *Turk*, and yet afterwards repent him, and return into the Church; he need not be Re-ordained a ſecond time. The Caſe will be the ſame in Marriage.

4. I ſaid heretofore, That the *Roman* Doctors allowed this Diſſolution of the Bond when the Man and Wife, even after the Conſummation of Marriage, would transfer themſelves into a Friary, or a Nunnery: but becauſe it hath been ſince doubted, that no Authority can be ſhewed for this particular, I ſhall here ſhew it out of the old Conſtitutions of the Church of *England*.

Prov. Will. Lindewode, ſive Conſt. Ang. fol. 94. Ver. nul. latenus Separentur.

"And in the Caſe of Religion, that is the true underſtanding, that to wit, either "of them betaking themſelves to Religion before Carnal Knowledge, the Bond of the "Marriage be diſſolved: but *if both enter into Religion, and make ſolemn Profeſſion, then* "*ſuch Marriage is diſſolved, even as to the Bond.*

5. It hath alſo been ſaid, that if the Bill paſs, it will paſs againſt the *Church of England*: which I confeſs, I do not underſtand: For *the Church of* England *is within the Kingdom of* England; and if the Laws of this Kingdom be for the Bill, and have declared it by the Aſſent of the King, Lords, and Commons, as in the Caſe of the *Marquis* of *Northampton*, was *heretofore declared in the time of King* Edward *the 6th. That by the Laws of God the Innocent Party was at liberty to Marry again*; Certainly the *Spiritual Lords*, as well as the *Temporal* and *Commons*, are bound to admit it: and *I know not why they ſhould be called the Church* England, *that joyn with the Council of* Trent, *and plead ſo much to uphold it; rather than others that joyn with all the Reformed Churches, and plead againſt that Canon of the Church of* Rome, *which hath laid an Anathema upon us, if we do not agree with them.*

As to the ſuppoſed Inconveniences that will follow upon Marrying again,

1. More Inconveniences will follow if they be forbidden to Marry again.

2. The Father would be in an uncertainty of the Children, if he ſhould retain the Adultereſs.

3. There would be danger of poyſoning or killing one another, if no Second Marriage were allowed.

4. Where the Parties ſhould conſent to new Marriages for their own Luſts, the Magiſtrates have Power to over-rule ſuch Practices.

5. If they be kept altogether by Divorce from Marrying, it would occaſion the Innocent Party to Sin.

FINIS.